

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

KENDALL SPENCE,

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

§
§
§
§
§
§
§
§
§

Case No. 6:20-CV-72-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Petitioner Kendall Spence, an inmate proceeding *pro se*, filed the above-styled and numbered petition for writ of habeas corpus. The case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636. On March 17, 2020, Judge Mitchell issued a Report and Recommendation (Docket No. 6) recommending that the Court grant Petitioner's motion for voluntary dismissal without prejudice. *Id.* at 1. A return receipt indicating delivery to Petitioner was received by the Clerk on April 2, 2020. Docket No. 7.

This Court reviews the findings and conclusions of the Magistrate Judge *de novo* only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a *de novo* review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). Here, Petitioner did not file objections in the prescribed period. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews her legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*,


492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

Having reviewed the Magistrate Judge's Report and Recommendation, the Court finds that there is no clear error, abuse of discretion, or erroneous legal conclusion and therefore adopts the Report and Recommendation of the United States Magistrate Judge (Docket No. 6) as the findings of this Court.

Accordingly, it is hereby **ORDERED** that the Magistrate Judge's Report (Docket No. 6) be **ADOPTED**. It is further

ORDERED that Petitioner's motion for voluntary dismissal without prejudice (Docket No. 5) is **GRANTED** and the petition is **DISMISSED WITHOUT PREJUDICE**.

So **ORDERED** and **SIGNED** this **30th** day of **April, 2020**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE